STATE OF MICHIGAN

COURT OF APPEALS

RAMCO GERSHENSON, INC.,

Petitioner-Appellee,

V

BANGOR TOWNSHIP,

Respondent-Appellant.

UNPUBLISHED
June 29, 2004

No. 242026
Tax Tribunal
LC No. 00-256282

Before: O'Connell, P.J., and Wilder and Murray, JJ.

PER CURIAM.

Respondent appeals by right from a judgment of the Michigan Tax Tribunal granting petitioner a reduction in the taxable value of its property because of a split of the property that occurred in 1997. We affirm in part but remand for further proceedings.

Respondent claims the split-off of parcel 01 from parcel 00 had no effect on the taxable value of parcel 00 and that petitioner must show a diminution in the income from parcel 00 before petitioner is entitled to a reduction in the property's taxable value. Because the rental income from parcel 00 actually *increased* after the split, respondent argues that the Tax Tribunal erred in reducing parcel 00's taxable value. We disagree.

Absent a claim of fraud, our review of a decision by the Tax Tribunal is limited to determining whether the tribunal made an error of law or adopted a wrong principle. *Danse Corp v Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002). The Tribunal's interpretation and application of statutes is reviewed de novo. *Id*. This Court "generally defers to the Tax Tribunal's interpretations of the statutes it administers and enforces." *Schultz v Denton Twp*, 252 Mich App 528, 529; 652 NW2d 692 (2002).

As an initial matter, we recognize that our Supreme Court's holding in *CAF Investment Co v Saginaw Twp*, 410 Mich 428; 302 NW2d 164 (1981), requires respondent to use the income-capitalization method to determine the value of parcel 00. The Court in *CAF* held that when valuing property subject to a long-term lease at below-market rent, "[a] hypothetical rental income based on comparable properties leased at more favorable rates [is] an improper basis for

determining true cash value." *CAF*, *supra* at 449. Instead, "the assessor [is] obligated to use the actual income under the existing long-term lease as the basis for his calculations."[1] *Id*. Thus, under the income-capitalization method, the value of parcel 00 must be based on its actual rental income.

However, *CAF* does not foreclose consideration of other factors affecting the fair market value of property. It is a "well established rule that all factors relevant to property value should be considered in the assessment process." *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 499-500; 473 NW2d 636 (1991). The Court in *CAF*, *supra* at 460, noted that "there may well be other circumstances or considerations that necessarily require adjustment to the projected actual income figure to arrive at an accurate true cash valuation." Among the factors noted by the Court was the right to repossession of the land at the end of the lease. *Id*. Moreover, "[i]n addition to income earned annually during an ownership term, an additional form of income is the property reversion which is defined as the net amount realized from the sale of property when ownership is terminated." 3 State Tax Commission Assessor's Manual, ch 8, p 1.

Even if parcel 00 is considered "excess" land, as respondent contends, such land is included in the computation of value under the income-capitalization method. Under a heading entitled, "PROBLEMS AND ANSWERS INVOLVING REFINEMENTS IN THE APPLICATION OF THE INCOME APPROACH," the Assessor's Manual explains:

> What is done with excess land in the income approach?
>
> Answer: *It is added to the estimated value found by capitalizing the income earned by the property exclusive of the excess land*. [Assessor's Manual, ch 8, p 6 (emphasis added).]

Thus, respondent *must* consider the value of the split-off land in calculating the post-split taxable value of parcel 00. Because the loss of acreage may have affected petitioner's reversionary interest and, thus, the property's true cash value under the income-capitalization approach, petitioner need not show a reduction in actual income in order to claim that parcel 00's taxable value was reduced by the split. Respondent's argument to the contrary must fail.

Next, respondent claims the Tax Tribunal erred in calculating the reduction in parcel 00's taxable value because the apportionment formula used by the tribunal applied only to non-transfer splits of property. While respondent's argument is technically correct, we find no error

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[1] The Legislature has restricted the holding in *CAF Investment Co v Saginaw Twp*, 410 Mich 428; 302 NW2d 164 (1981), to property leased "before January 1, 1984 for which the terms of the lease governing the rental rate or tax liability have not been renegotiated after December 31, 1983." *Carriage House Cooperative v Utica*, 172 Mich App 144, 149; 431 NW2d 406 (1988). The parties in this case stipulated that parcel 00 is still encumbered by the 1964 lease between petitioner and Kmart Corporation. Therefore, the holding in *CAF* applies to parcel 00.

in the Tax Tribunal's decision to apportion the taxable value of the original parent parcel between parcels 00 and 01. The State Assessor's Board handout, on which the tribunal relied, does not explain how to calculate the taxable value of an untransferred parcel left over from a split that involves a transfer. This suggests either that the taxable value of an untransferred parcel is calculated in the same manner as that of all parcels in a non-transfer split, or that no adjustment is needed at all.

The latter assumption is untenable because it would require a landowner who splits off a large chunk of property to continue paying taxes on the whole parcel. Moreover, if the taxable value of untransferred property is not adjusted following a split, then landowners will attempt to skirt the undesirable effect of an immediate transfer by delaying the transfer and splitting the property in a preceding year. This would have the undesirable effect of indirectly restraining the alienation of land. Therefore, we agree with the Tax Tribunal that the taxable value of a parent parcel should be apportioned in both non-transfer splits and in splits involving an untransferred parcel of land.

However, we agree with respondent that the Tax Tribunal adopted a wrong principle when it apportioned the pre-split taxable value of the parent parcel based solely on acreage. The State Assessor's Board handout on which the tribunal relied states that "[t]he apportionment is to be made on the basis of the contribution each of the new parcels made to the true cash value of the parent." Furthermore, our Constitution mandates that property be assessed at a proportion of its "true cash value." Const 1963, art 9, § 3. The Tax Tribunal concluded that parcel 01 was excess land, and properly accounted for its contribution to the value of parcel 00 before the split. However, a reduction in the taxable value of parcel 00 based on the percentage of its lost acreage of parcel 01 did not reflect the actual diminution in the true cash value of parcel 00, since there was no evidence in the record to support the finding that parcel 01 constituted sixteen percent of the computation of true cash value of the entire parcel under the income-capitalization method prior to its split. Thus, the taxable value of the parent parcel must be recalculated using a correct principle reflecting its percentage to true cash value, rather than on a percentage of acreage basis.

We affirm the Tax Tribunal's decision to reduce the taxable value of parcel 00 by apportioning the pre-split taxable value of the parent parcel between parcels 00 and 01. We remand for reapportionment based on the percentage contribution of each parcel to the true cash value of the parent. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray